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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation
on the 10th day of August, 2000

In the matter of

U.S.-Ukraine Third Country
Code-Share Opportunities

Served: August 10, 2000

Docket OST-2000-7784-

Application of

American Airlines, Inc.

under 49 U.S.C. 40109 for an exemption
(U.S.-Ukraine) and route integration

Docket OST-2000-7228 -5

Application of

American Airlines, Inc.

for U.S.-Ukraine code-share designation and
allocation of frequencies

Docket OST-2000-7227 -5

Application of

United Air Lines, Inc.

under 49 U.S.C. 40109 for an exemption,
allocation of frequencies, and U.S.-Ukraine
code-share designation

Docket OST-2000-7293 -4

ORDER TO SHOW CAUSE

SUMMARY

By this order we tentatively select American Airlines, Inc., to serve Kiev, Ukraine, under a code-share arrangement with Swissair, and tentatively allocate it 3.5 weekly frequencies to perform that service.

BACKGROUND

Under the U.S.-Ukraine Air Transport Agreement, up to four U.S. carriers may be designated for combination or code-share service in the U.S.-Ukraine market, and collectively may operate up to 18 weekly frequencies. Four U.S. carriers are currently designated to provide scheduled combination service--Northwest Airlines, United Air Lines, Delta Air Lines, and Trans World Airlines. Northwest, United and Delta operate third-country code-share services using three of the available designations. TWA was authorized to conduct code-share services with Ukraine International using the fourth designation; however, its underlying authority expired June 5, 2000. As a result, TWA's authorization is now dormant and its designation is available for another carrier.

In addition to the designation limitations, third-country code-share authorizations are limited under the agreement to service to two Ukraine points, Kiev and Odessa, via a total of four European intermediate points, up to a total of four Europe-Ukraine city-pair markets. Northwest and KLM serve Kiev via Amsterdam, United and Lufthansa serve Kiev via Frankfurt, and Delta and Air France serve Kiev via Paris.¹ Delta was initially authorized to serve Kiev and Odessa via Vienna under a code-share arrangement with Austrian; however, Delta subsequently ceased services to both points with Austrian and the Department has authorized Delta now to serve Kiev with Air France. As Air France does not serve Odessa, only three Europe-Ukraine city-pair markets are now receiving U.S./third-country code-sharing service, and thus one third-country city-pair code-share authorization is available for allocation to another carrier.

APPLICATIONS

Applications were filed by American and United. Each of the applicants proposes to operate code-share services in the U.S.-Ukraine market via an intermediate European point with a third-country carrier: American would operate a daily service with Swissair via Zurich from ten U.S. gateways to Kiev, and United would operate four weekly flights with Austrian via Vienna from three U.S. gateways to Odessa. American requests 3.5 weekly frequencies for its proposed service and United requests 2 weekly frequencies for its proposed service.²

American does not now serve Ukraine and would require both the fourth designation and a third-country code-share authorization to conduct its services. United has already been designated to serve Ukraine and, thus, would require only allocation of the one available third-country code-share authorization.

¹ These carriers collectively now operate 9 weekly frequencies in the market.

² Under the U.S.-Ukraine Agreement, frequencies operated under code-share arrangements with third-country carriers count as one-half a frequency.

American states that its selection would increase competition between the U.S. and Ukraine by adding a fourth airline competitor in the large Kiev market. American maintains that sufficient designations are available for its service because TWA's designation is now dormant. In the alternative, American states that Delta's designation would become dormant when Delta ceases its services with Austrian Airlines.

United maintains that its selection will restore a U.S. carrier competitive presence at Odessa as a result of Delta's discontinuation of its code-share service to that point.

RESPONSIVE PLEADINGS

American, United, and Delta filed answers and replies.³

American opposes United's application, arguing that United already code shares with Lufthansa via Frankfurt and is attempting to block American's proposal by taking up two of the four limited-entry code-share opportunities, preventing American from having its first code-share access to Ukraine. American maintains that its proposed service with Swissair is superior to United's proposal and would provide greater public benefits because (a) American and Swissair will provide daily service between the U.S. and Kiev via Zurich, while United and Austrian would serve Odessa only four days a week via Vienna; (b) Swissair serves Kiev with 150-seat A320 aircraft in both directions, while Austrian serves Odessa with F70 aircraft (75 seats) eastbound and CRJ aircraft (50 seats) westbound; and (c) American and Swissair will provide daily on-line connections to more U.S. cities via Zurich than United will via Vienna. Finally, American states that Kiev generates far more traffic than Odessa, and that Kiev's two airports offer a greater level of service to points within and beyond Ukraine than Odessa.

United states that it would offer the only code-share service to Odessa and will preserve the U.S. carrier presence in that market. United maintains that it is more important to keep a competitive presence at Odessa than to add a fourth carrier at Kiev. United further argues that since its selection uses only the available third-country code-share authorization, its selection would ensure that one designation would remain available for direct service should another U.S. carrier seek to do so itself or under a code share with a Ukrainian carrier.

Delta takes no position on whether American should be awarded the dormant TWA code-share authority to conduct its services with Swissair. Delta opposes American's application to the extent it seeks to usurp Delta's existing approved Ukraine code-share authority with Air France, which the Department has already authorized. Delta states that, under the terms of the blanket code-share authorization with Air France, it notified the Department on February 17, 2000, that it would be transferring certain of its limited-entry code-share service from Austrian to Air France, that no comments were submitted to Delta's notification with respect to Kiev, and that the Department subsequently confirmed its approval of the Delta/Air France code-share services on March 23, 2000.

³ United's answer to American's application was accompanied by a motion to file an otherwise unauthorized document. We will grant the motion.

TENTATIVE DECISION

We have tentatively decided to (1) select American to serve Ukraine via Zurich, under its code-share arrangement with Swissair, and (2) allocate American 3.5 frequencies for operation of that service.

No U.S. carriers currently operate services in the U.S.-Ukraine market with their own aircraft. Therefore, the third-country code-share rights under the U.S.-Ukraine aviation agreement provide valuable opportunities for U.S. carriers to introduce service, establish a competitive presence, and develop and serve the market. Until recently all of the code-share authorizations were being used fully. As a result of TWA's expired authorizations and Delta's change in service, opportunities have become available that now enable additional service by U.S. carriers.⁴ We tentatively conclude that the public interest favors awarding these opportunities to expand the competitive services available in the market and enhance the benefits to the traveling public.

While both American and United have presented proposals that would benefit travelers, we tentatively conclude that American's proposal offers greater overall benefits and should be granted the available authorizations in this case.⁵

U.S.-Kiev is the largest U.S.-Ukraine market and is considerably larger than Odessa.⁶ Kiev is the capital of Ukraine and a major business and cultural center. Its importance is reflected in the service that it receives. All three of the other U.S. code-share partnerships serve Kiev. United operates a daily service with Lufthansa, Northwest operates 6 weekly flights with KLM, and Delta operates 5 weekly flights with Air France. The selection of American, which does not now serve Ukraine, would increase the number of competitors in the most significant Ukraine market and would enhance competition among the code-share partnerships serving that city.

American's entry would mean service by four U.S. carriers between U.S. and Ukraine over four different European points, thereby enhancing the range of service options for travelers in the largest U.S.-Ukraine market. Furthermore, American's service proposal would offer more frequencies than United, more capacity, and nonstop-to-nonstop-service to a larger number of U.S. cities and, thus, would make significantly greater use of the limited authorizations available. In reaching this tentative decision, we have taken into consideration the benefits of United's proposal, most notably the resumption of service to Odessa and, thus, a U.S. carrier presence in that market. While United's service would provide travelers access to another Ukrainian city, that service would be provided on a less-than-daily basis, with four weekly flights, and would not provide nonstop-to-nonstop connecting service to as many U.S. cities as American's Kiev proposal. American would serve 10 cities compared to three for United. In these circumstances, we are not persuaded that the benefits of United's Odessa service outweigh the benefits of American's new entrant, daily service proposal in this case.

⁴ Although American had also raised the issue of reallocating Delta's authorization to serve Ukraine, it did so only as an alternative to reallocation of TWA's dormant designation. As TWA's authorization is available, there is no need to address American's arguments with respect to Delta's Ukraine authority.

⁵ On the basis of data officially noticeable under Rule 24(g), we find that American is qualified to provide the exemption services tentatively authorized. We also find that approval of the authority requested will not constitute a major regulatory action under the Energy, Policy, and Conservation Act of 1975.

⁶ American's answer dated May 11, 2000, in Docket OST-2000-7293, page 5.

Finally, we recognize, as United has pointed out, that our proposed decision here would mean that all of the available carrier designations under our agreement with Ukraine would be used for third-country code-share services. Ukraine, however, is a developmental market and the service history of the market and the record in this case have demonstrated the importance of facilitating third-country code-share services. In these circumstances, we do not believe that preserving a designation for future direct or bilateral code-share services, thereby allowing a U.S. opportunity to lie dormant at a time when a U.S. carrier is now seeking to use that opportunity, is in the public interest.

ECONOMIC AUTHORITY

Should we make final our tentative decision in this case, we would grant American's request for exemption authority to serve the U.S.-Kiev market under its code-share arrangement with Swissair, its request for route integration authority, and would allocate it 3.5 weekly frequencies for its services.⁷

Consistent with our standard practice, the route integration authority granted would be subject to the conditions we normally attach to such authorizations, and the frequency allocation would be subject to a 90-day dormancy condition.

American and Swissair hold a blanket statement of authorization to conduct code-share services subject to certain notification requirements and, thus, no additional code-share authority would be necessary, subject to compliance with the notice provisions.⁸

Finally, as TWA's designation is dormant, should we finalize our tentative decision here, we would withdraw the designation of TWA and designate American as the fourth carrier authorized to serve Ukraine under the aviation agreement.

ACCORDINGLY,

1. We establish Docket OST-2000-7784 for authorization of U.S.-Ukraine third-country code-share services;
2. We consolidate the applications of American Airlines, Inc., in Dockets OST-2000-7227 and OST-2000-7228, and United Air Lines, Inc., in Docket OST-2000-7293 into the *U.S.-Ukraine Third-Country Code-Share Proceeding*, Docket OST-2000-7784;
3. We tentatively select American Airlines, Inc., for allocation of the available authorities to operate third-country code-share service in the U.S.-Ukraine market under its code-share arrangement with Swissair and (a) tentatively grant it exemption authority under the provisions

⁷ There are sufficient frequencies under the U.S.-Ukraine agreement for American's service. U.S. carriers now use 9 of the 18 frequencies. An award to American would bring the U.S. carrier total to 12.5 frequencies under the code-share service equivalency provisions of the agreement. c.f. footnote 2, *supra*.

⁸ American and Swissair have not yet filed the necessary notification of these services, and if they desire to pursue this opportunity, should do so promptly. American stated in its April 10, 2000 application that Swissair would separately submit the required 30-day notice in Docket OST-99-5944.

of 49 U.S.C. 40109 to the extent necessary to provide scheduled foreign air transportation of persons, property, and mail between points in the United States and Kiev, Ukraine, and to integrate this authority with its existing certificate and exemption authority; and (b) allocate it 3.5 frequencies for that service;

4. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
5. We direct interested persons wishing to comment on our tentative findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the Department, Dockets, Docket OST-2000-7784, U.S. Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, DC 20590, no later than 7 calendar days from the date of service of this order; answers thereto shall be filed no later than 5 calendar days thereafter;⁹
6. If objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;¹⁰
7. If no objections are filed, we will deem all further procedural steps waived and will proceed to issue a final order awarding the authority as proposed;
8. We grant all motions for leave to file otherwise unauthorized documents in the captioned dockets;
9. To the extent not granted or tentatively granted, we tentatively deny all requests in the captioned dockets; and
10. We will serve this order on American Airlines, Inc.; United Air Lines, Inc.; Delta Air Lines, Inc.; the Ambassador of Ukraine in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

FRANCISCO J. SANCHEZ
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.gov/reports/reports_aviation.asp*

⁹ The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system. In the alternative, filers are encouraged to use the electronic submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

¹⁰ As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.